

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

10-CR-6107L

v.

ENRIQUE LOPEZ,

Defendant.

Defendant, Enrique Lopez (“Lopez”), stands charged in an indictment with participating in a narcotics conspiracy. This Court referred all pretrial motions to United States Magistrate Judge Marian W. Payson pursuant to 28 U.S.C. § 636(b).

Defendant duly filed motions to dismiss the indictment (Dkt. ##13, 24) on several grounds. Lopez also moved for disclosure of grand jury minutes (Dkt. #34).

The motions were briefed and argued before Magistrate Judge Payson and the Magistrate Judge issued a thorough Report and Recommendation and Decision and Order (Dkt. #39) recommending that the motions to dismiss be denied and the Magistrate Judge also denied the request for grand jury minutes. Lopez filed objections to the Magistrate Judge’s Report and Recommendation that the Court deny the motions to dismiss (Dkt. # 40). There has been no appeal from the Magistrate Judge’s decision denying production of grand jury minutes.

I have carefully reviewed the original motion, the papers filed in response, as well as the Magistrate Judge’s Report and Recommendation. The oral argument before the Magistrate Judge was recorded and that has been available also for my review.

Defendant’s two-page filing (Dkt. #40) objecting to the Magistrate Judge’s Report and Recommendation is a general objection and fails to point out with any specificity what part or parts of the Magistrate Judge’s Report and Recommendation contained error warranting review and

reversal. In any event, I have reviewed each and every one of the reasons advanced by defendant in the original motion to dismiss and the Magistrate Judge's Report which found no basis to dismiss. I agree with the facts discussed by the Magistrate Judge and the legal conclusions set forth in the Report and Recommendation. The indictment is certainly valid on its face charging a conspiracy which was returned during the applicable statute of limitations. I agree with the Magistrate Judge that at this stage, the Government is entitled to rely on the presumption of continuity of the conspiracy and, as pointed out by the Magistrate Judge, issues as to whether the defendant was a member of the charged conspiracy during the applicable period, is a question of fact for the jury and not something that can be determined on a pretrial motion such as this.

I also agree with the Magistrate Judge that none of the delay in returning the indictment or unsealing it warrants dismissal of the indictment. I find no due process violation based on the facts set forth here. For all the reasons discussed at length by Magistrate Judge Payson, I agree with the Report and Recommendation that the defendant's motions to dismiss should be denied.

Although apparently not challenged now, I agree with the Magistrate Judge's decision denying the request for grand jury minutes.

CONCLUSION

I accept and adopt the Report and Recommendation of United States Magistrate Judge Marian W. Payson (Dkt. #39). I find no reason to alter, modify or reverse the recommendation. It is, therefore, ORDERED that defendant's motions to dismiss the indictment (Dkt. ## 13, 24) are denied and the Magistrate Judge's decision denying defendant's motion for disclosure of grand jury minutes (Dkt. #34) is affirmed in all respects.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
January 5, 2012.